approached this concept of "intent to defraud" on the basis that it was synonymous with a dishonest intent within the meaning of section 24 of the Penal Code, that is, an intent to cause wrongful gain to one person, or wrongful loss to another. In my opinion there is a clear distinction between fraud and dishonesty. Section 25 of the Penal Code describes that a thing is done fraudulently if it is done with intent to defraud.

The meaning of "intent to defraud" was carefully considered by the English Court of Appeal in *R.* v. *Wines.*[2] In that case a man falsified certain accounts to show that the firm which employed him was doing better than it was. The appellant argued that he made no monetary gain out of this. He merely did so in order to retain his employment with the firm. Lord Chief Justice Goddard said —

"Having had the advantage of a full argument, the court has come to the conclusion that the Recorder's direction can be upheld and was correct. The definition which has so often been given of the difference between an intent to deceive and an intent to defraud is to be found in Buckley J.'s judgment in *Re London & Globe Finance Corporation, Ltd.* [1903] 1 Ch. 728, at p. 732: 'To deceive is, I apprehend, to induce a man to believe that a thing is true which is false, and which the person practising the deceit knows or believes to be false. To defraud is to deprive by deceit: it is by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action.' That is the locus classicus on the subject. It has been cited with approval over and over again, and, therefore, one has to consider in all these cases whether the deceit which has been practised has merely induced, or was intended to induce, a state of mind, or has induced a course of action.

One thing that is clear is that the appellant has himself said what he intended to achieve by the falsification, namely, to remain in the service of the society; in other words, to avoid being dismissed by them, which he feared would happen if he made a proper return. If he had been dismissed because he did not show a satisfactory return, he would have lost his wages, and therefore the society, by his falsification, assuming his object to be what he said it was, would be induced to retain him in their service and pay him wages, and he was thereby getting wages from the society by means of falsifying the accounts.

For these reasons we think that the learned Recorder was justified, in view of what the appellant himself said, in directing the jury that, whether they thought that the object of falsification was to conceal the thefts — and I should think that there is very little doubt that that really was in the appellant's mind — or whether they thought that it was merely to induce the society to keep him in their employ and pay him his wages, there was in the circumstances an intent to defraud, and that, therefore, the direction was right."

In the present case the respondent who was a bankrupt obtained advantage of credit facilities he would not have obtained if he had not represented himself to be the manager of Artisancraft. As a consequence he was enabled to trade to his own financial advantage and to the injury of Ho Chye Choon. It also contributed to the financial discomfiture of Tong Chen Chong, the registered proprietor of Artisancraft. This clearly falls within the intent in *Wines'* case.

I therefore find that the learned District Judge misdirected himself on the law in finding that the element of intention to defraud was not made out. He moreover regarded the whole matter as an ordinary civil transaction in which I think he was clearly wrong because he completely ignored the fact that the respondent was a bankrupt whose order the complainant would not have accepted had he sought to contract in his own personal capacity without the representation that he was the manager of Artisancraft.

The appeal of the Public Prosecutor against acquittal was therefore allowed.

The respondent indicated that he was prepared to plead guilty to the charge under section 3 of the Fraudulent Debtors Ordinance and I convicted him thereon instead of remitting the case back to the learned District Judge lest further mistakes should occur. Justice requires an element of speed, commonsense and saving of time and expense to litigants and to the courts. In all the circumstances I felt that a term of imprisonment could be avoided inasmuch as although the respondent was guilty of obtaining credit facilities by false pretences, the element of fraudulent intent did not appear to be so very serious on the facts proved. Had the complainant not seized part of the furniture supplied, a deadlock over payment may not have arisen. He was therefore little more than technically guilty. I fined him $500 or 3 months imprisonment in default and ordered him to pay $100 as costs of the prosecution and $2,000 compensation to the complainant.

Appeal allowed.

Solicitors: *A. S. K. Wee; L. Rayner.*

LAM SOON CANNERY CO. v. H. W. HOOPER & CO.

[O.C.J. (WinslowJ.) November 9, 1964]

[Singapore — Originating Summons No. 48 of 1964]

Practice and Procedure — Foreign judgment — Registration of — Discretion.

Reciprocal Enforcement of Judgments Ordinance (Cap. 18), s. 3(1) — Registration of arbitral award converted into judgment of High Court in England — Discretion of court.

The applicants asked for an order that the registration of a judgment obtained by the respondents in the Queen's Bench Division of the High Court in England against applicants be set aside. The judgment was based on certain arbitration proceedings which ultimately went before the Appeal Board whose award against the applicants was eventually converted into a judgment of the High Court in England. The order for registration of the judgment obtained in England was attacked on the

grounds that it was not just and convenient that the judgment should be enforced in the State, that the original court acted without jurisdiction, and that the judgment debtor had not submitted to the jurisdiction of the court in England.

Held: (1) the High Court has a discretion in registering a judgment obtained in a foreign court and an application to register will only be granted if the court thinks it is just and convenient to do so;

(2) the presence of a foreign order or judgment declaring the award enforceable does not relieve our court of the duty of examing whether the judgment debtor was a party to a valid agreement to arbitrate and whether the arbitration tribunal acted within the terms of that agreement. On the facts it appeared that the judgment debtor was a party to a valid agreement to arbitrate in England and that the arbitration tribunal had acted within the terms of the agreement. Therefore the application to set aside the registration of the judgment must be dismissed.

Cases referred to:—

(1) *Ho Hong Bank Ltd.* v. *Ho Kai Neo* [1932] M.L.J. 78.

(2) *Scott* v. *Pilkington* 121 E.R. 989.

(3) *Guiard* v. *De Clermont & Donner* [1914] 3 K.B 155.

(4) *In re Dulles' Settlement (No. 2)* [1951] 1 Ch. 850.

(5) *Whittam* v. *W. J. Daniel & Co. Ltd.* [1961] 3 W.L.R. 112.

ORIGINATING SUMMONS.

J. E. Lloyd for the applicants.

C. L. Duff for the respondents.

Cur. Adv. Vult.

Winslow J.: The applicants ask for an order that the registration in the High Court in Singapore of a judgment dated 4th July, 1963, obtained by the respondents in the Queen's Bench Division of the High Court of Justice of England against the applicants in the sum of $340,538.56 and taxed costs, pursuant to an order made by me on 31st March, 1964 under the provisions of section 3(1) of the Reciprocal Enforcement of Judgments Ordinance (Cap 18), may be set aside. The order for registration of the judgment obtained in England was attacked on a number of grounds as follows:—

(a) that it is not just and convenient that the judgment should be enforced in the State;

(b) that the original court acted without jurisdiction;

(c) that the judgment debtor, who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court;

(d) that the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court.

In support of the argument that it is not just and convenient to enforce the judgment in the State, reference was made to a number of alleged irregularities in relation to certain arbitration proceedings which ultimately went before an Appeal Board whose award against the applicants was eventually converted into a judgment of the High Court in England.

Considerable argument was also directed towards the merits of the case preceding the final award. I do not think that I need concern myself seriously with allegations of irregularities, defects or erroneous conclusions reached prior to the conversion of the award into a judgment of the English court except in so far as they may tend to establish one of the grounds (b) to (d) above beyond reasonable doubt (*vide per* Sproule J. in *Ho Hong Bank Ltd.* v. *Ho Kai Neo.*[1]) It should be noted that as Cockburn C.J. said in *Scott* v *Pilkington* [2] a judgment of a foreign court, having jurisdiction over the subject-matter, cannot be questioned on the ground that the foreign court has mistaken its own law, or has come on the evidence to an erroneous conclusion as to the facts.

It is significant that the matter was fully argued on a summons before Master Diamond, a Master of the Supreme Court of Judicature, seeking an order to set aside the judgment of the High Court. Master Diamond refused to make any such order and the applicants then appealed to Mr. Justice Megaw against Master Diamond's order rejecting their application. The appeal failed. I am informed from the Bar that no further steps have been taken in the English courts to challenge the validity of the judgment.

Mr. Lloyd, counsel for the applicants, drew my attention to the fact that, whereas in England, on application for the registration of a foreign judgment the court shall, subject to proof of the prescribed matters etc., order the judgment to be registered, the corresponding provision in Singapore (section 3(1) (Cap. 18) above) provides that on application for registration of a judgment obtained in a superior court of the United Kingdom, the High Court here may, if in all the circumstances of the case it thinks it is just and convenient that a judgment should be enforced in the State etc., order the judgment to be registered accordingly. He contends that Sproule J., in the *Ho Hong Bank Ltd.* case cited above, was wrong in holding that the holder of a foreign judgment was entitled to his provisional order as a matter of course, that is, as in England now, and that the learned judge was wrong in not considering whether provisional registration was just and convenient.

An application for provisional registration is, under the relevant rules, made *ex parte* before a judge of the High Court in chambers. I do not think that any judge would make an order as a

matter of course having regard to the provisions of sub-section (2) of section 3 which impose restrictions on such registration. In fact the Rules made under the Reciprocal Enforcement of Judgments Ordinance (G.N. No. 122 of 1938) make special provision for the procedure to be adopted on such applications which must be supported by an affidavit of the facts. I do not think that Sproule J. intended to exclude the exercise of discretion by the judge because, after stating that the judgment holder is entitled to a provisional order as a matter of course, and that the onus is cast upon the debtor to assail registration later, he continues, "In our case the burden was in fact thrown upon the judgment creditor, instead, to support his judgment and not as against his debtor, but against the court. With great respect, I do not think the court would be justified in so acting except in some such extreme case as that the foreign judgment was so manifestly incompetent as to render the application on the face of it an abuse of the process of the court." In this last sentence Sproule J., according to my understanding of what he says, exemplifies the kind of application for provisional registration which it would not be just and convenient to grant.

In my opinion, on an *ex parte* application, supported by an affidavit, which *ex facie* satisfies the requirements of the Ordinance and the Rules, the judge who has no other materials before him, will be hard put to it to decide that it would not be just and convenient to enforce the judgment in the State in the absence of grounds which are also apparent from the record before him. This he can only do in some such extreme case as Sproule J. has described or where it would appear to be inconvenient to enforce the judgment here on the ground, for example, that the debtor has no assets within the local jurisdiction.

Mr. Lloyd urges me, on this application to set aside the registration of the judgment, to hold that it would not now be just and convenient to enforce it here. It is clear that registration can be set aside on one of the grounds appearing in section 3(2). Once such a ground is shown it follows that the registration must be set aside.

I therefore propose to deal with this application on the basis that the attack on registration is confined to grounds (a), (b) and (c) of section 3(2) but before doing so it may be desirable not to lose sight of *Dicey's* statement with regard to the registration of foreign arbitral awards in his 7th Edition of the Conflict of Laws at page 1068 which is as follows:—

> "The Administration of Justice Act, 1920, provides that an award made in any country of the Commonwealth outside the United Kingdom to which that Act is extended by Order in Council, may be enforced in England by registration as a foreign judgment. The exercise of jurisdiction by the registering court is discretionary, and an application to register the award as a judgment will be granted only if the court thinks it just and convenient .... It is submitted that the arbitration proceedings and the enforcement proceedings must be treated as one, and that the requirements of the Administration of Justice Act, 1920, and of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, are satisfied if the arbitration tribunal exercised its jurisdiction properly within the terms of the agreement to arbitrate. The foreign award takes the place of the foreign judgment for the purposes of these Acts. On the other hand, the presence of a foreign order or judgment declaring the award enforceable does not relieve the English court of the duty of examining, upon application to set aside the registration, whether the foreign arbitration tribunal had jurisdiction. In the particular circumstances of the enforcement of an arbitration award, this examination must be limited to the question whether the judgment debtor was a party to a valid agreement to arbitrate abroad and whether the arbitration tribunal acted within the terms of the agreement."

It will be observed that registration was discretionary in England, before 1933, by virtue of the Administration of Justice Act, 1920 which is similar to our Ordinance. The importance of what Dicey says however lies, so far as this application is concerned, in the attitude of the English courts towards a foreign arbitral award which is sought to be registered in England. Applying the test propounded by Dicey in reverse, i.e. in considering whether the English arbitral award should be registered in Singapore, I have to ask myself two questions —

> 1. Was the judgment debtor a party to a valid agreement to arbitrate in England?
>
> 2. Did the arbitration tribunal act within the terms of that agreement?

The answer to the first question is an emphatic "yes" in view of the provisions of clause 15 of the contract between the applicants and the respondents which reads —

> "*Arbitration.*—Any claim arising out of this contract to be made without undue delay and settled by arbitration in London in accordance with the rules of The London Copra Association endorsed hereon.
>
> The submission to arbitration contained in this contract may be made a rule of the High Court of Justice or any Division thereof on the application of either party."

It is with regard to the second question that complaint has been made, in addition to complaints with regard to the jurisdiction of the High Court or lack of submission to its jurisdiction.

The following irregularities were alleged:—

> (a) The arbitration proceedings were commenced after the expiration of the 6-year limitation period.
>
> (b) The Appeal Board in the arbitration improperly substituted Hooper & Co. (the respondents) as a party in place of Hooper & Co. Ltd.
>
> (c) The applicants did not submit to the jurisdiction of the English court although they did submit to arbitration in England.
>
> (d) The identity of the applicants as the persons intended to be sued was in doubt.

(e) The damages awarded were wrong in law and in fact.

For the purposes of this application, it is, I think, unnecessary for me to embark upon a detailed analysis of the facts involved in the arbitration proceedings except to observe that there were three contracts for the sale of a quantity of copra belonging to the applicants by Hooper & Co. The applicants were clearly in breach of contract in that they submitted false Bills of Lading indicating shipment in May, 1951 when in fact the goods were shipped in June, 1951. Hooper & Co. had sold the copra to a firm "N" which in turn sold it to a firm "B" which in turn sold the whole or part of it to a firm "A". (I think that for the purposes of this judgment it is unnecessary to set out their full names). As a natural consequence of the discovery of the false documents there were proceedings which "boomeranged" from "A" to "B", from "B" to "N" and then from "N" to Hooper & Co. On their view of the contract, Hooper & Co. considered that they were entitled to be recompensed by the applicants for such losses as they had been required to bear.

With regard to each of the irregularities mentioned earlier my views are as follows:—

(a) Arbitration proceedings were in fact commenced within the limitation period within the meaning of section 27(3) of the Limitation Act, 1939 by virtue of a request made in a letter dated 24th April, 1957 calling upon the applicants to nominate an arbitrator. By a letter dated 17th August, 1957 the applicants, through their solicitors, approved the appointment of an arbitrator and it seems to me that Mr. Duff is correct in his contention that this approval constitutes an entry of appearance to arbitration proceedings.

(b) There could never have been any doubt on the part of the applicants that it was Hooper & Co. who were suing them and not Hooper & Co. Ltd. I find it difficult to believe that the applicants could have been so naive as to think that Hooper & Co. Ltd. might well have been an assignee of Hooper & Co. who had the right to sue them. I think there were ample materials before the Board to justify their coming to the conclusion that it was Hooper & Co. who were the claimants and not Hooper & Co. Ltd.

(c) There is ample evidence to show that the applicants did submit to the jurisdiction of the English court. Not only were they served with a Summons relating to the proceedings to convert the award into a judgment but they even sought to have the judgment of the High Court set aside by Master Diamond and later appealed against the latter's refusal to Mr. Justice Megaw, in proceedings where the merits as well as the question of jurisdiction were argued for a whole day. If they had succeeded they would have obtained a judgment in their own favour and the question of registering the judgment in Singapore would never have arisen. It therefore seems to me, on the authority of *Guiard* v. *De Clermont & Donner* [3] and *In re Dulles' Settlement (No. 2)* [4] that the applicants must be taken to have submitted to the jurisdiction. As Denning L.J. said in the later case — "I quite agree, of course, that if he fights the case, not only on the jurisdiction, but also on the merits, he must then be taken to have submitted to the jurisdiction, because he is then inviting the court to decide in his favour on the merits; and he cannot be allowed, at one and the same time, to say that he will accept the decision on the merits if it is favourable to him and will not submit to it if it is unfavourable."

(d) I do not think there could have been any doubt as to the identity of the persons to be sued and I think it is quite clear from the record that wherever "Lam Soon Cannery Ltd." occasionally appears in place of "Lam Soon Cannery Co.", it was "Lam Soon Cannery Co." that was clearly intended. I do not think that a new defendant or respondent was being substituted. This was a simple question of misnomer which could not possibly have prejudiced the application (vide *Whittam* v. *W. J. Daniel & Co. Ltd.* [5])

(e) I do not think any just complaint can be made as to the proper measure of damages which was applied in this case.

It follows therefore that the answer to the second question is also in the affirmative i.e. that the arbitration tribunal acted within the terms of the agreement to arbitrate in England.

The High Court or a Judge thereof in England does not merely act as a rubber stamp when giving leave to enforce an award on an arbitration agreement under section 26 of the Arbitration Act, 1950, and I am satisfied that most of the matters which have been reopened before me must also have already been considered. No appeal has been taken to the English Court of Appeal on the rejection of the appeal made to Mr. Justice Megaw. So far as I am concerned the matter must be regarded as concluded between the parties. I cannot be expected in Singapore to sit as the English Court of Appeal to decide whether Mr. Justice Megaw was right. All I have to decide is whether it is just and convenient that the judgment should be registered here having regard to the grounds advanced for setting the registration aside. I can think of no reason why it is not.

Although I have indicated that it is too late for the applicants to make complaint of lack of jurisdiction in the High Court (which is the original court for the purposes of this application) by virtue of the proceedings before Master Diamond and Mr. Justice Megaw and the failure to take the matter any further in England, I have, nevertheless, examined the complaints made in respect of the arbitration proceedings with some care to ensure that such defects as are alleged did not constitute a failure to comply with the terms of the arbitration agreement. The registering court, as Dicey says, is not relieved of the duty of examining whether the foreign arbitration tribunal had jurisdiction. I am satisfied that it had. Some complaint was made of undue delay on the part of the respondents but if there was delay, as there undoubtedly was, the fault did not lie with the respondents alone. Complaint was also made with regard to the service of various notices on the applicants. Under the Rules which bound them they were deemed to be

domiciled in England and to reside at the premises of the London Copra Association and notices could be served on them at that address. They have not discharged the onus on them of showing that such notices were not properly issued in accordance with the Rules or that they were otherwise prejudiced in any way.

It follows that the application to set aside the registration of the judgment in question fails and it is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Drew & Napier; Donaldson & Burkinshaw.*

PUBLIC PROSECUTOR v. JOHAR

[A.C.J. (Wee Chong Jin C.J.) November 11, 1964]

[Singapore — Magistrate's Appeal No. 36 of 1964]

Penal Code, ss. 44 and 385 — Extortion — Putting person in fear of injury — Meaning of "injury" — Whether exercise of legal powers can constitute injury.

The accused in this case was an acting superintendent of police in the Federation of Malaya. It was alleged that when he was in Singapore he demanded the sum of $50,000 from one Lee Seng Chwee with the implied threat that one Lee Seng Kee, who was alleged to have entered into Malaya illegally, would be arrested if the money was not paid. The learned district judge acquitted the accused although he found that the prosecution had proved its case on the facts, as he felt bound to hold that under the law a threat to exercise a legal power of arrest did not constitute putting a person in fear of injury for the purposes of section 385 of the Penal Code. The Public Prosecutor appealed.

Held: the accused was not a person invested with any of the powers and duties of a police officer in Singapore and he had no legal powers to arrest any person in Singapore; and therefore assuming that the correct principle to be that, so far as extortion under the Penal Code is concerned, the exercise of legal powers however done can never constitute "injury" as defined in the Penal Code, the trial judge was wrong in holding that on the facts as found by him he was bound to acquit the respondent at the close of the case for the prosecution.

[**Editorial Note:** See "Legal Logic [1962] M.L.J. xxix.]

Cases referred to:—

(1) *Vincent Lee* v. *Rex* [1949] M.L.J. 296.

(2) *Abu Hassan* v. *Public Prosecutor* [1962] M.L.J. 61.

(3) *Loh Kwang Siang* v. *Public Prosecutor* [1960] M.L.J. 271.

MAGISTRATE'S CRIMINAL APPEAL.

Francis T. Seow (Ag. Solicitor-General) for the appellant.

Freddie Yin for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an appeal by the Public Prosecutor against the decision of the First Criminal District Judge in acquitting the respondent at the close of the case for the prosecution. The charge against the respondent was as follows:—

"You, Johar bin Abdul Rahman are charged that you on or about the 27th day of May, 1963, at 8.00 p.m. at the Ambassador Hotel, Meyer Road, Singapore, in order to the committing of extortion did put one Lee Seng Chwee in fear of a certain injury, to wit by threatening to arrest one Lee Seng Kee for having illegally entered into Malaya and that you have thereby committed an offence punishable under section 385 of the Penal Code (Chapter 119)."

The facts are comparatively simple. Lee Seng Kee who had gone to China in 1948 had apparently returned to Malaya in 1962 illegally. On the 25th May 1963 the respondent, who was an Acting Superintendent of Police in the then Federation of Malaya, went to the house of one Lee Seng Chwee in Muar, Johore, where Lee Seng Kee was staying. There he intimated to Lee Seng Kee and Lee Seng Chwee that he was a government officer and that he knew Lee Seng Kee had returned to Malaya illegally. When he was asked "What do you think", he replied "I am not giving you trouble now".

This visit set in motion certain events which resulted in the respondent on the 27th May 1963 i.e. two days later meeting Lee Seng Chwee and two other persons in Singapore on the roof garden of the Ambassador Hotel. There the respondent asked from Lee Seng Chwee the sum of $50,000 with the implied threat that Lee Seng Kee would be arrested if the money was not paid.

The respondent was arrested in Johore on the 29th October 1963 on a Singapore warrant of arrest and was eventually charged in Singapore.

At the close of the case for the prosecution the trial judge acquitted the respondent and recorded his reasons for so doing as follows:—

"At this stage of the trial, on the question of fact, my finding is that the prosecution has succeeded in proving its case. However, on the question of law, I am unable to call on the accused for his defence in view of the two authorities cited to me, namely *Vincent Lee's* case (1) and *Abu Hassan's* case.(2) These two decisions clearly lay down that the exercise of legal powers, however done, can never constitute harm within the meaning of section 44 of the Penal Code. I am satisfied that the accused has the power of arrest in this case but that power need not necessarily be exercised in Singapore. My view is under the law as it stands, a threat to exercise a legal power of arrest does not constitute putting a person in fear of injury. In the circumstances, on the question of law, I am not in a position to call on the accused for his defence, and accordingly he is acquitted and discharged."

This appeal raises two questions: (1) the first question is whether the principle laid down by the two authorities referred to by the trial judge is correct. The learned Acting Solicitor-General says it is not. (2) The second question